

## JOURNAL OF THE HOUSE.

---

Tuesday, November 1, 2005.

Met according to adjournment, at eleven o'clock A.M., with Mr. Petrolati of Ludlow in the Chair (having been appointed by the Speaker, under authority conferred by Rule 5, to perform the duties of the Chair).

Prayer was offered by the Reverend Robert F. Quinn, C.S.P., Chaplain of the House, as follows:

God, Our Creator, the Ultimate Source of Compassion and Truth, we believe that You watch over and care for each one of us at all times. For this, we are grateful. We also depend upon Your assistance as we try to resolve the complex legislative and cultural issues of these changing times. We know that we cannot propose and enact legislation which addresses the goals, needs and expectations of all the members of our diverse communities. But with Your guidance and Your gift of wisdom, our decisions can be more thoughtful, prudent and just and serve the common good. Inspire us to keep our own goals, principles and values in clear focus as we serve the people who depend upon our priorities and decisions.

Prayer.

Grant Your blessings to the Speaker, the members and employees of this House and their families. Amen.

At the request of the Chair (Mr. Petrolati), the members, guests and employees joined with him in reciting the pledge of allegiance to the flag.

Pledge of  
allegiance.

### *Resolutions.*

Resolutions (filed with the Clerk by Ms. Grant of Beverly) on the occasion of the one hundred and fiftieth birthday of the Beverly Public Library, were referred, under Rule 85, to the committee on Rules.

Beverly  
Public  
Library.

Mr. Scaccia of Boston, for the committee on Rules, then reported that the resolutions ought to be adopted. Under suspension of the rules, on motion of Mr. Verga of Gloucester, the resolutions (reported by the committee on Bills in the Third Reading to be correctly drawn) were considered forthwith; and they were adopted.

### *Statement Concerning Representative Kennedy of Brockton.*

A statement of Mr. Rogers of Norwood concerning Mr. Kennedy of Brockton was spread upon the records of the House, as follows:

MR. SPEAKER: I would like to call to the attention of the House the fact that one of our colleagues, Representative Kennedy of Brockton, will not be present in the House Chamber for today's sitting due to his hospitalization. Any roll calls that he may miss today will be due entirely to the reason stated.

Statement  
concerning  
Representative  
Kennedy of  
Brockton.

### *Statement of Representative Peterson of Grafton.*

A statement of Mr. Peterson of Grafton was spread upon the records of the House, as follows:

Statement of  
Representative  
Peterson of  
Grafton.

MR. SPEAKER: I would like to call to the attention of the House the fact that I was unable to be present in the House Chamber for a portion of yesterday's session due to attending a very important commission hearing. Had I been present for the taking of ye and nay number 248, I would have voted in the affirmative. Had I been present for the taking of ye and nay number 249, I would have voted in the negative. Any roll calls that I missed yesterday was due entirely to the reason stated.

*Petition.*

Brewster  
Island,  
land  
property.

Mr. Dempsey of Haverhill presented a petition (subject to Joint Rule 12) of Brian S. Dempsey and others relative to authorizing the Division of Capital Asset Management and Maintenance to convey certain land known as Outer Brewster Island; and the same was referred, under Rule 24, to the committee on Rules.

*Paper from the Senate.*

Dedham,  
land  
transfer.

The House Bill authorizing the town of Dedham to transfer land for senior center purposes (House, No. 4102) came from the Senate passed to be engrossed, in concurrence, with an amendment striking out all after the enacting clause and inserting in place thereof the following:

"SECTION 1. The town of Dedham may transfer the care, custody, management and control of a certain parcel of land, currently held for recreational purposes, from the parks and recreation commission to the board of selectmen, to be used for senior center purposes. This parcel is a portion of the Striar Property and is shown as 'Parcel A 122, 861 Sq. Ft 2.2 Acres' on a plan entitled 'Plan of Land Showing Proposed Change in Use/Care/Custody of a Portion of 'Manor Estate,' Sprague Street, Dedham, MA', dated September 27, 2004, prepared by the Norfolk county engineering department.

SECTION 2. No document transferring care, custody, control or management of any portion of the property described in section 1 shall be valid unless such document provides that the property shall be used solely for the purposes of a senior center as described in section 1. This document shall include a reversionary clause that stipulates that the property will revert to the Dedham parks and recreation commission for public recreation purposes if the property ceases to be used for the express purposes for which it was transferred."

Under suspension of Rule 35, on motion of Mr. Coughlin of Dedham, the amendment (reported by the committee on Bills in the Third Reading to be correctly drawn) was considered forthwith; and it was adopted, in concurrence.

Winchendon,  
library  
land.

A Bill authorizing the town of Winchendon to use a portion of a certain parcel of public park land for library purposes (Senate, No. 2151, amended by striking out section 2 and inserting in place thereof the following three sections:

"SECTION 2. No document transferring care, custody, control or management of the property described in section 1 shall be valid unless the document provides that the property shall be used solely

for the purposes of providing access and parking for the Beals Memorial Library as described in section 1. The document shall include a reversionary clause that stipulates that the property shall revert to the town of Winchendon for public park purposes if the property ceases to be used for the express purposes described in section 1.

SECTION 3. The town of Winchendon shall transfer, for purposes of article 97 of the Amendments to the Constitution, a parcel of land which is currently under the care, custody, management and control of the board of selectmen for general municipal purposes. If no suitable parcel can be transferred for article 97 purposes, the town shall grant a conservation restriction, as defined in section 31 of chapter 184 of the General Laws, on a parcel of land, which is currently under the care, custody, management and control of the board of selectmen for general municipal purposes, to the town's conservation commission. Any parcel transferred or dedicated pursuant to this section shall be of size and value equal to or greater than that of the portion of the parcel described in section 1.

SECTION 4. This act shall take effect upon its passage.") (on a petition) [Local Approval Received], passed to be engrossed by the Senate, was read; and it was referred, under Rule 7A, to the committee on Steering, Policy and Scheduling.

*Reports of Committees.*

By Mr. Correia of Fall River, for the committee on Elder Affairs, on a petition, a Bill to correct income calculation for spouses of nursing home residents (House, No. 1493).

By the same member, for the same committee, on a petition, a Bill relative to reserving beds in nursing homes for residents during certain leaves of absence (House, No. 1494).

By the same member, for the same committee, on a petition, a Bill providing for payments to nursing homes for the provision of Kosher food for the full fiscal year (House, No. 1495).

By the same member, for the same committee, on a petition, a Bill relative to nursing homes (House, No. 1497).

By the same member, for the same committee, on a petition, a Bill relative to nursing home audit disallowances (House, No. 1498).

By the same member, for the same committee, on a petition, a Bill relative to liability insurance payments (House, No. 1499).

By the same member, for the same committee, on a petition, a Bill to protect assets of the the spouse of a nursing home resident (House, No. 1500).

Severally read; and referred, under Joint Rule 1E, to the committee on Health Care Financing.

By Mr. Flynn of Bridgewater, for the committee on Bonding, Capital Expenditures and State Assets, on a message from His Excellency the Governor, a Bill authorizing the Department of Conservation and Recreation and the Department of Fish and Game to acquire conservation restrictions in and to the lands of the town of Egremont (printed in House, No. 4345).

Nursing  
homes.

ri

ri

ri

ri

Liability  
insurance  
payments.  
Nursing  
homes.

Egremont,  
conservation  
restrictions.

Hatfield,  
land.

By the same member, for the same committee, on House, No. 4353, a Bill providing for a partial release of certain land in Hatfield from the operation of an agricultural preservation restriction (House, No. 4472).

Heating  
energy  
assistance.

By Mr. Dempsey of Haverhill, for the committee on Telecommunications, Utilities and Energy, on House, No. 4438, a Bill relative to heating energy assistance and tax relief (House, No. 4473).

Severally read; and referred, under Rule 33, to the committee on Ways and Means.

Manufacturers  
coupons.

By Mr. Scibak of South Hadley, for the committee on Health Care Financing, on House, Nos. 2624 and 3743, reports recommending that the Bill relative to manufacturers coupons (House, No. 3743) ought to pass with an amendment substituting therefor a Bill relative to manufacturers coupons and rebates (House, No. 4471). Referred, under Rule 33, to the committee on Ways and Means, with the amendment recommended by the committee on Health Care Financing (House, No. 4471) pending.

Somerville,  
affordable  
housing.

By Mr. Honan of Boston, for the committee on Housing, that the recommitted Bill establishing a project mitigation contribution or linkage program for affordable housing in the city of Somerville (Senate, No. 2044) [Local Approval Received] ought to pass with an amendment by striking out all after the enacting clause and inserting in place thereof the text contained in House document numbered 4474. Referred, under Rule 7A, to the committee on Steering, Policy and Scheduling, with the amendment pending.

Hepatitis C,  
prevention.

By Mrs. Walrath of Stow, for the committee on Health Care Financing, that the Bill relative to HIV and Hepatitis C prevention (House, No. 4176) ought to pass [Cost: \$10,290.00]. Referred, under Rule 7A, to the committee on Steering, Policy and Scheduling.

Mr. Donato of Medford, for said committee, reported that the matter be scheduled for consideration by the House; and, under said rule, it was placed in the Orders of the Day for the next sitting for a second reading.

Health  
care,  
access.

By Mr. Donato of Medford, for the committee on Steering, Policy and Scheduling, that the Bill promoting access to health care (House, No. 4463) be scheduled for consideration by the House. Placed in the Orders of the Day for the next sitting for a second reading.

#### *Emergency Measure.*

Volunteer  
firefighters,  
death  
benefits.

The engrossed Bill providing death benefits for survivors of volunteer firefighters and other volunteer public safety personnel (see House, No. 4369, amended), having been certified by the Clerk to be rightly and truly prepared for final passage, was considered, the question being on adopting the emergency preamble.

A separate vote was taken, as required by the provisions of Article XLVIII (as amended by Article LXVII) of the Amendments to the Constitution; and the preamble was adopted, by a vote of 10 to 0. Sent to the Senate for concurrence.

#### *Engrossed Bills.*

##### *Engrossed bills*

Establishing the Massachusetts principal and income act (see House, No. 760); and Bills  
enacted.

Exempting the town of Winthrop from certain provisions of the civil service law (see House, No. 4155);

(Which severally originated in the House);

Severally having been certified by the Clerk to be rightly and truly prepared for final passage, were passed to be enacted; and they were signed by the acting Speaker and sent to the Senate.

#### *Orders of the Day.*

##### *House bills*

Relative to certain roadways of the Department of Conservation and Recreation formerly known as the Metropolitan District Commission (House, No. 3146); Second  
reading  
bills.

To create an appointed superintendent of streets in the town of Lakeville (House, No. 4296); and

Establishing the Concord Housing Development Corporation (House, No. 4320);

Severally were read a second time; and they were ordered to a third reading.

The Senate Bill authorizing the sale of certain conservation land in the town of Tewksbury (Senate, No. 1210, amended), reported by the committee on Bills in the Third Reading to be correctly drawn, was read a third time; and it was passed to be engrossed, in concurrence. Third  
reading  
bill.

The House Bill authorizing the Division of Capital Asset Management and Maintenance to convey certain land to the town of Milford (House, No. 1420), reported by the committee on Bills in the Third Reading to be correctly drawn, was read a third time; and it was passed to be engrossed. Sent to the Senate for concurrence. H

#### *Recesses.*

At thirteen minutes after eleven o'clock A.M., on motion of Mr. Kocot of Northampton (Mr. Petrolati of Ludlow being in the Chair), the House recessed until the hour of one o'clock P.M.; and at eight minutes after one o'clock the House was called to order with Mr. Petrolati in the Chair. Recesses.

The House thereupon took a further recess, on motion of Mr. Peterson of Grafton, until half past one o'clock; and at twenty-three minutes before two o'clock the House was called to order with Mr. Petrolati in the Chair.

#### *Engrossed Bill — Land Taking.*

The engrossed Bill authorizing the Division of Capital Asset Management to lease a certain parcel of land in the city of Boston (see Senate, No. 2181) (which originated in the Senate), having been certified by the Clerk to be rightly and truly prepared for final passage, was put upon its final passage. Boston,  
land.

Bill enacted  
(land taking),  
yea and nay  
No. 250.

On the question on passing the bill to be enacted, the sense of the House was taken by yeas and nays (this being a bill providing for the taking of land or other easements used for conservation purposes, etc., as defined by Article XCVII of the Amendments to the Constitution); and on the roll call 151 members voted in the affirmative and 0 in the negative.

**[See Yea and Nay No. 250 in Supplement.]**

Therefore the bill was passed to be enacted; and it was signed by the acting Speaker and sent to the Senate.

*Motion to Reconsider.*

Health care  
access bill,  
procedures.

Mr. Peterson of Grafton moved that the vote be reconsidered by which the House, at yesterday's sitting, adopted an Order relative to special procedures for consideration of the House Bill promoting access to health care (House, No. 4465).

Pending the question on the motion to reconsider, further consideration thereof was postponed, on further motion of the same member, until one o'clock P.M.

Subsequently, the noon recess having terminated, the motion to reconsider was considered further.

Motion to  
reconsider  
negated,  
yea and nay  
No. 251.

After debate on the question on the motion to reconsider, the sense of the House was taken by yeas and nays, at the request of Mr. Peterson; and on the roll call 21 members voted in the affirmative and 128 in the negative.

**[See Yea and Nay No. 251 in Supplement.]**

Therefore the motion to reconsider was negated.

Subsequently a statement of Mr. Atsalis of Barnstable was spread upon the records of the House, as follows:

Statement of  
Representative  
Atsalis of  
Barnstable.

MR. SPEAKER: I would like to call to the attention of the House the fact that I was unable to be present in the House Chamber for the taking of the preceding roll call due to official business in another part of the State House. Had I been present when the vote was taken, I would have voted in the negative.

*Orders of the Day.*

Motion  
picture  
industry,  
incentives.

The report of the committee of conference on the disagreeing votes of the two branches, with reference to the Senate amendment of the House Bill providing incentives to the motion picture industry (House, No. 4252, amended), was considered.

Committee of  
conference  
report  
accepted,  
yea and nay  
No. 252.

After debate on the question on acceptance of the report, the sense of the House was taken by yeas and nays, at the request of Mr. Binienda of Worcester; and on the roll call 147 members voted in the affirmative and 3 in the negative.

[Mr. Wallace of Boston answered "Present" in response to his name.]

**[See Yea and Nay No. 252 in Supplement.]**

Therefore the report of the committee of conference was accepted. The report then was sent to the Senate for concurrence.

*Engrossed Bill.*

The engrossed Bill establishing minimum energy-efficiency standards for certain products (see House, No. 4299, amended) (which originated in the House), having been certified by the Clerk to be rightly and truly prepared for final passage, was put upon its final passage.

Product  
efficiency  
standards.

After debate on the question on passing the bill to be enacted, the sense of the House was taken by yeas and nays, at the request of Mr. Dempsey of Haverhill; and on the roll call 152 members voted in the affirmative and 0 in the negative.

Bill  
enacted,  
yea and nay  
No. 253.

**[See Yea and Nay No. 253 in Supplement.]**

Therefore the bill was passed to be enacted; and it was signed by the acting Speaker and sent to the Senate.

*Recesses.*

At eighteen minutes before three o'clock P.M., on motion of Mr. Bosley of North Adams (Mr. Petrolati of Ludlow being in the Chair), the House recessed until half past three o'clock P.M.; and at that time the House was called to order with Mr. Petrolati in the Chair.

Recesses.

The House thereupon took a further recess, on motion of Mr. Scibak of South Hadley, until four o'clock; and at that time the House was called to order with Mr. Flynn of Bridgewater in the Chair.

The Chair (Mr. Flynn) thereupon declared a further recess until half past four o'clock; and at that time the House was called to order with Mr. Petrolati in the Chair.

*Quorum.*

Mr. Flynn of Bridgewater thereupon asked for a count of the House to ascertain if a quorum was present. The Chair (Mr. Petrolati of Ludlow), having determined that a quorum was not in attendance, then directed the Sergeant-at-Arms to secure the presence of a quorum.

Quorum.

Subsequently a roll call was taken for the purpose of ascertaining the presence of a quorum; and on the roll call 150 members were recorded as being in attendance.

Quorum,  
yea and nay  
No. 254.

**[See Yea and Nay No. 254 in Supplement.]**

Therefore a quorum was present.

*Orders of the Day.*

The House Bill establishing "the welcome home bill" for Massachusetts servicemembers, veterans and their families (House, No. 4417, changed) was read a second time.

Service-  
members,  
Welcome  
Home .

Pending the question on adoption of the amendment previously recommended by the committee on Ways and Means,— that the bill be amended by substitution of a Bill establishing the "Welcome Home Bill" for Massachusetts servicemembers, veterans and their families (House, No. 4469),— Mr. DeLeo of Winthrop moved that the proposed substitute bill be amended by striking out section 3 and inserting in place thereof the following section:

Service-  
members,  
Welcome  
Home .

“SECTION 3. There is hereby established a commission to study tuition and fee waiver programs, pursuant to section 19 of chapter 15A and section 137 of chapter 33 of the General Laws, for veterans and national guard members. The commission shall consist of 11 members, including the speaker of the house of representatives, or his designee; the president of the senate, or his designee; the minority leader of the house of representatives, or his designee; the minority leader of the senate, or his designee; the chairs of the joint committee on higher education, or their designees; the chairs of the joint committee on veterans and federal affairs, or their designees; the chair of the house ways and means committee, or his designee; the chair of the senate ways and means committee, or his designee; and the secretary of the department of veterans services, or his designee. Results of the commission’s study, including but not limited to, an evaluation of the feasibility of expanding the programs to include any fees, rather than solely matriculation fees, a review of the current pool of eligible recipients and the level of state and local payments for such fees, and an analysis of the need for changes in the laws and regulations relative thereto, shall be reported to the joint committee on veterans and federal affairs and to the clerks of the house and senate by April 1, 2006.”

The further amendment was adopted.

The amendment recommended by the committee on Ways and Means, as amended, then also was adopted.

After remarks on the question on ordering the substituted bill, as amended, to a third reading, the sense of the House was taken by yeas and nays, at the request of Mr. Verga of Gloucester; and on the roll call 152 members voted in the affirmative and 0 in the negative.

**[See Yea and Nay No. 255 in Supplement.]**

Therefore the substituted bill, as amended, was ordered to a third reading.

Subsequently, under suspension of the rules, on motion of Mr. Verga, the bill (having been reported by the committee on Bills in the Third Reading to be correctly drawn) was read a third time; and it was passed to be engrossed, its title having been changed by said committee to read: “An Act providing benefits to servicemembers, veterans and their families.”

The bill (House, No. 4469, amended) then was sent to the Senate for concurrence.

*Papers from the Senate.*

Mrs. Harkins of Needham being in the Chair,—

The House Bill relative to the tax laws of the Commonwealth (House, No. 4169) came from the Senate passed to be engrossed, in concurrence, with amendments striking out all after the enacting clause and inserting in place thereof the text contained in Senate document numbered 2241, striking out the title and inserting in place thereof the following title: “An Act relative to tax laws.”; and inserting before the enacting clause the following emergency preamble:

“Whereas, The deferred operation of this act would tend to defeat its purpose, which is forthwith to make certain changes in the tax

Bill ordered  
to a third  
reading,  
yea and nay  
No. 255.

Tax  
provisions,  
update.

laws and other laws relating to the department of revenue, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.”

Under suspension of Rule 35, on motion of Mr. Binienda of Worcester, the amendments (reported by the committee on Bills in the Third Reading to be correctly drawn) were considered forthwith.

Pending the question on concurring with the Senate in its amendments, Mr. Jones of North Reading and other members of the House moved that the amendments be amended by inserting after section 5 the following section:

“SECTION 5A. Paragraph (a) of Part B of section 3 of chapter 62 of the General Laws, as so appearing in the 2004 Official Edition, is hereby amended by striking out subparagraph (13) and inserting in place thereof the following subparagraph:—

(13) An amount equal to the amount of the charitable contribution deduction allowed or allowable to the taxpayer under section 170 of the Code; provided, however, that, in taxable years beginning on or after January 1, 2004, no such deduction shall be allowed in any taxable year unless the personal exemptions provided in clause (A) of subparagraph (1), of clause (A) of subparagraph (1A) and clause (A) of subparagraph (2) of paragraph (b) of Part B for such taxable year are the maximum allowable amounts set forth in said clauses; and provided further, that notwithstanding said section 170 of the Code, no deduction shall be allowed for contributions of household goods or used clothing, as those items are recognized under said section 170 of the Code. All requirements, conditions and limitations applicable to charitable contributions under the Code shall apply for purposes of determining the amount of the deduction under this subparagraph, except that taxpayers shall not be required to itemize their deductions in their federal income tax returns.

SECTION 5B. Section 4 of chapter 62 of the General Laws, as so appearing, is hereby amended by striking out subsection (b) in its entirety and inserting in place thereof the following subsection:—

(b) Part B taxable income shall be taxed at the rate of 5.0 percent for the taxable year beginning on January 1, 2006.”

Mr. Binienda of Worcester thereupon raised a point of order that the further amendment was improperly before the House for the reason that it went beyond the scope of the pending amendment.

In answer to the point of order, the Chair (Mrs. Harkins of Needham) ruled that the point of order was well taken; and the amendment was laid aside accordingly.

Mr. Peterson of Grafton thereupon appealed from the decision of the Chair; and the appeal was seconded by Mr. Jones of North Reading.

After debate on the question was put “Shall the decision of the Chair stand as the judgment of the House?”, the sense of the House was taken by yeas and nays, at the request of Mr. Peterson; and on the roll call 132 members voted in the affirmative and 20 in the negative.

**[See Yea and Nay No. 256 in Supplement.]**

Therefore the decision of the Chair was sustained.

Point of  
order.

Appeal  
from  
decision  
of Chair.

Decision  
of Chair  
sustained,  
yea and nay  
No. 256.

House  
concurred  
in Senate  
amendments,  
yea and nay  
No. 257.

After debate on the question on concurring with the Senate in its amendment, the sense of the House was taken by yeas and nays, at the request of Mr. Peterson of Grafton; and on the roll call 95 members voted in the affirmative and 56 in the negative.

**[See Yea and Nay No. 257 in Supplement.]**

Therefore the House concurred with the Senate in its amendments.

*Order.*

On motion of Mr. DiMasi of Boston,—

Next  
sitting.

*Ordered,* That when the House adjourns today, it adjourn to meet on Thursday next at eleven o'clock A.M.

---

Mrs. Parente of Milford then moved that the House adjourn; and the motion prevailed. Accordingly, without further consideration of the remaining matters in the Orders of the Day, at the hour of sixteen minutes before six o'clock P.M. (Mrs. Harkins of Needham being in the Chair), the House adjourned, to meet on Thursday next at eleven o'clock A.M.